

***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES***

Applicant: Mark LANDESMANN
Title: BUYER-DRIVEN TARGETING
OF PURCHASING ENTITIES
Appl. No.: 09/888,439
Filing Date: 06/26/2001
Examiner: Khanh H. LE
Art Unit: 3688
Conf. No.: 9934

REPLY BRIEF

Mail Stop Appeal Brief - Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is in response to the Office Communication dated April 16, 2008, revising the Examiner's Answer.

Appellant stands by its arguments in support of all of the other claims made in the Appeal Brief, and traverses Examiner's replies in this regard.

1. However, the Examiner states that Applicant introduced its definition of "system" for the first time on Appeal. But, see Applicant's Response dated June 14, 2004, at page 50, as follows:

The system for purposes of the present application and for the system claims listed in the present amendment and reply is defined as all elements in a network of entities, which perform an essential work or service function for the deliberate purposes of cooperating with the procurement of data by the network, and/or with the creation of value based on the processing and utilization of these data by the network, and/or with the provision of consideration offered in return for the receipt of such data. Note that the buyer entities, although they actively

cooperate with and participate in the system, as described in the specification, are not part of the system itself since they do not perform a work or service function, but instead perform what we refer to as a use or consumption function in relation to the present inventive system.


Regardless of how the system is defined, it is illogical to say that the system comprises the buyer entities. To the extent that proof of purchase records, as one of ordinary skill would understand that term (e.g., at least some information relating to the item description, price or amount paid, seller, etc.), exist in Goldhaber, they originate with the Goldhaber system, however that is reasonably defined. Goldhaber merely monitors the customers and sellers on its system. See the comments relating to the tracking of the customer's usage of the system at column 6, lines 52-53 of Goldhaber. That is substantively different from the buyer entity taking an action to submit or have submitted a purchase record, i.e., the need for active cooperation of the seller with the system is obviated. Note that obtaining proof of purchase records by monitoring the system itself as point of sale payments are made, has been specifically excluded from the claim because this is a system independent from the sellers who have sold the items whose sale is documented by buyer-submitted proof of purchase records. One of ordinary skill in the art would not and could not consider the buyer entity to be part of the system.

2. At page 28 the examiner argues that the "condition precedent" language in the claim is not a positively recited step and will not be given weight. The "condition precedent" limitation is language that defines the "facilitating" step. Namely, the "facilitating" step does not take place unless "the system has received from that buyer entity the at least one respective third party purchase record or information verifiably derived therefrom. In other words, the method performed by the system does not perform the "facilitating" step unless this data has been received and entered, i.e., the condition satisfied. This is a clear functional part of the method operation. See *Ex parte Pfeiffer*, 135 USPQ 31, cited by the Examiner.

3. The complexity of the Examiner's reasoning to combine the teachings of multiple disparate systems to achieve a system which is still missing key elements in the claimed invention, points to the non-obviousness of the claimed invention.

For the foregoing reasons and the reasons cited in the Appeal Brief, the Examiner's rejections are erroneous based on the art, and reversal of the applied rejection is respectfully requested.

Respectfully submitted,

By  _____

Date June 16, 2008

FOLEY & LARDNER LLP
Washington Harbour
3000 K Street NW, Suite 500
Washington, D.C. 20007-5143
Telephone: (202) 672-5485
Facsimile: (202) 672-5399

William T. Ellis
Attorney for Applicant
Registration No. 26,874

Should additional fees be necessary in connection with the filing of this paper, the Commissioner is hereby authorized to charge Deposit Account No. 19-0741 for any such fees.
